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March 17, 2017

VIA ECF
Judge Margo K. Brodie
225 Cadman Plaza East
Brooklyn New York 11201
Telephone: (718) 613-2140

RE: Liu v. Da Di Chinese Food, Inc., et al.
Case No. 1:16-cv-00937
Letter to Request a Pre-motion Conference

Dear Judge Brodie:

We are counsel to Defendants in this case. We write this letter to request a pre-motion conference to allow Defendants to file a motion for Summary Judgment.

This action was commenced on February 24, 2016. The scheduled discovery phase has now been completed[1].

This case involves a dispute over minimum wage and overtime compensation under the Fair Labor Standards Act, by Plaintiff who worked at Da Di Chinese Food, Inc. for less than 6 months in 2015, as a delivery person. Plaintiff's alleged hours and pay are directly contradicted by the schedule and records produced by Defendants on Plaintiff's actual hours and pay.

Additionally, Defendants have produced numerous records showing that Defendants makes approximately $150,000 in gross sales annually. This was provided in Defendants initial disclosure through tax returns, and further supplemented and shown during discovery through records of sales for each day and bank statements, amongst other documents.

The plaintiff-employee bears the burden of establishing FLSA coverage to prove his employer's liability. *Li v. Zhao*, No. 11-CV-5636, 2014 WL 3887860, at *3 (E.D.N.Y. Aug. 8, 2014) (citing *Owusu v. Corona Tire Shop, Inc.*, No. 09-CV-3744, 2013 WL 1680861, at *3 (E.D.N.Y. Apr. 17, 2013)).

To establish FLSA coverage, Plaintiff would have to prove that Defendants' annual gross volume of sales equals or exceeds $500,000. 29 U.S.C. §§ 203(s)(1)(A)(i)-(ii).

[1] Plaintiff has just filed a motion requesting an extension of the discovery period solely for the deposition of 2 non-party witnesses. It has not been decided.

In this case, Defendants believe this case is ripe for summary judgment, as the overwhelming and undisputed evidence shows that Defendants do not make anywhere close to $500,000 in gross annual sales.

For the foregoing reasons, we respectfully request that your honor schedule a pre-motion conference to allow Defendant to file a motion for Summary Judgment.

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/s/ Vincent S. Wong

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